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10 ATTORNEYS FOR FEDERAL
11 TRADE COMMISSION

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 THE BILLING RESOURCE d/b/a INTEGRETTEL,
16 Debtor-Plaintiff-Appellee,

17 v.
18

19 FEDERAL TRADE COMMISSION et al.,

20 Defendant-Appellant.
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)
)
) No. 5:07-CIV-5758-JW

) Date: NO HEARING SET

) Judge: Hon. James Ware
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)
)

22 On Appeal from the United States Bankruptcy Court for the Northern District
23 of California, No. 07-52890, Adversary Proceeding No. 07-5156 (Weissbrodt)

24 **FEDERAL TRADE COMMISSION'S APPLICATION FOR ACCELERATED**
25 **CONSIDERATION OF ITS MOTION FOR STAY PENDING APPEAL**
26 **OF THE BANKRUPTCY COURT'S NOVEMBER 7, 2007, PRELIMINARY INJUNCTION**

27
28 Defendant-appellant the Federal Trade Commission ("Commission") hereby applies for

1 Accelerated Consideration of Its Motion for Stay Pending Appeal of the Bankruptcy Court's November
2 7, 2007, Preliminary Injunction. As explained below, debtor-plaintiff-appellee The Billing Resource
3 dba Integretel ("Integretel") is a defendant in a Commission law enforcement action set to go to trial on
4 February 25, 2008. The November 7 preliminary injunction enjoins the Commission from prosecuting
5 its case against Integretel and, therefore, unless this Court considers and grants the stay motion
6 sufficiently far in advance of the trial date, the trial will proceed without Integretel's participation. This
7 motion is fully briefed and, prior to Judge Whyte's recusal, was set for a hearing on December 21,
8 2007. Judge Whyte also stated that he intended to resolve the Commission's stay motion by no later
9 than December 28, 2007. In support of this application, the Commission states the following:

12 1. This matter involves appeals from an adversary proceeding brought by Integretel as part
13 of its bankruptcy. The adversary proceeding and Integretel's bankruptcy are directly related to a civil
14 law enforcement action, *FTC v. Nationwide Connections, Inc.*, No. 06-CV-80180-Ryskamp/Vitunac
15 (S.D. Fla.) (the "Enforcement Action" before the "Florida District Court"), brought by the Commission
16 against Integretel and other defendants in which the Commission alleges that the defendants violated
17 15 U.S.C. § 45(a) by deceptively and unfairly "cramming" millions of dollars of charges for collect
18 calls that were never made on to consumers' telephone bills. (D.E. 3, Att. 6). Trial in the Enforcement
19 Action is set for February 25, 2008.

22 2. On November 7, 2007, the bankruptcy court issued a preliminary injunction pursuant to
23 11 U.S.C. § 105(a), enjoining the Commission from prosecuting the Enforcement Action against
24 Integretel through March 14, 2008. (D.E. 3, Att. 26). Absent the stay sought by the Commission, this
25 injunction removes Integretel from the February 25, 2008 trial. The Florida District Court, in a
26 November 23, 2007, order denying a motion to extend the trial date made by some of the other 13
27 remaining defendants in the Enforcement Action, made clear that the trial is going forward with or
28

1 without Integretel's participation. (D.E. 25, Att. 2).

2 3. While this matter was still pending before Judge Whyte, the Commission filed its
3 motion for a stay pending appeal of the November 7 preliminary injunction on November 15, 2007.
4 (D.E. 3). The motion is fully briefed and ready for judicial resolution, as is a motion to change venue
5 that was briefed along with the stay motion. (D.E. 5, 18 and 25). Recognizing the need for an
6 expeditious decision on the Commission's stay motion given the February 25 trial date, in a November
7 15, 2007, order Judge Whyte calendared a hearing on the stay and venue motions for December 21,
8 2007, and indicated that he would endeavor to provide a decision on these motions within one week of
9 the hearing date unless he could do so earlier based on the parties' papers. (D.E. 10).

10 4. On December 6, 2007, Judge Whyte recused himself and vacated the December 21
11 hearing date. (D.E. 27). A prompt resolution of the Commission's stay motion remains necessary so
12 that, if the motion is granted, Integretel has adequate time to prepare its defense and the Commission
13 can prepare its case based on whether or not Integretel will be participating in the trial.

14 5. This Court's webpage indicates that the earliest available date for civil motions to be
15 heard is February 11, 2008. Given the February 25 trial date in the Enforcement Action, deferring
16 consideration of the Commission's motion until then effectively will be a denial of the Commission's
17 stay motion. The Commission, therefore, respectfully requests that this Court accelerate the
18 consideration of this stay motion. Since the motion is fully briefed, the Commission is willing to have
19 this process accelerated by having the motion decided on the papers without a hearing. But, if the
20 Court determines that oral argument will be helpful in resolving this motion, the Commission requests
21 that the hearing be set as soon as is practicable. Counsel for the Commission is available for argument
22 at the Court's convenience.

23 6. Counsel for the Commission has been in communication with counsel for Integretel

1 concerning this situation. The Commission's understanding is that Integretel requests a hearing on the
2 stay motion and that a February 11, 2008, hearing date is acceptable to Integretel.

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4 For the reasons set out above, the Commission's Application for Accelerated Consideration of
5 Its Motion for Stay Pending Appeal of the Bankruptcy Court's November 7, 2007, Preliminary
6 Injunction should be granted.

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